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No. 91-1857

Supreme Court, U.S.
FILED
JUN 20 1992
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1992

PATRICK MC BRIDE AND SONYA MC BRIDE, PETITIONERS

v.

EDWARD R. MADIGAN, SECRETARY OF AGRICULTURE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether, in this contempt proceeding, the court of appeals correctly determined that the damages for which petitioners sought compensation were not caused by a violation of the underlying injunction.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 20a-45a) is reported at 955 F.2d 571. The opinion of the district court (Pet. App. 1a-19a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 30, 1992. A petition for rehearing was denied on March 18, 1992. Pet. App. 47a. The petition for a writ of certiorari was filed on May 15, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This action is ancillary to a nationwide class action, originally styled *Coleman* v. *Block*, that challenged the loan liquidation foreclosure procedures employed by the Farmers Home Administration (FmHA). See *Coleman* v. *Lyng*, 864 F.2d 604 (8th Cir. 1988), cert. denied, 493 U.S. 953 (1989). In the class action, the district court entered a nationwide preliminary injunction on November 14, 1983. The injunction required FmHA to give 30 days' notice of its loan deferral program, see 7 U.S.C. 1981a, before "[d]emanding voluntary conveyance by [class members], or * * * proceeding against or depriving the [class members] of property in which the [FmHA] ha[d] a security interest." *Coleman* v. *Block*, 580 F. Supp. 192, 193-194 (D.N.D. 1983). The injunction was made permanent on February 17, 1984. *Coleman* v. *Block*, 580 F. Supp. 194, 211 (D.N.D. 1984). The court of appeals vacated the injunction as moot, however, in *Coleman* v. *Lyng*, *supra*, based on the enactment of the Agricultural Credit Act of 1987. See Pet. App. 22a.

2. In the early 1970s, petitioners purchased property in Maine to use as a poultry farm. To purchase the property, they obtained a $40,000 real estate loan from Skowhegan Savings Bank. The loan was secured by a first mortgage on the property. In addition, petitioners obtained from FmHA a $94,000 construction loan and a $29,000 operating loan, which were both secured by a second mortgage on the property. Pet. App. 22a-23a.

In 1981, petitioners stopped making payments on their loans. Neither the bank nor FmHA immediately foreclosed. In June 1982, however, the bank sent petitioners a letter stating that it intended to proceed with foreclosure. Petitioners then had a series of meetings with officials from the bank and FmHA. According to petitioners, at one of those meetings an FmHA official

told them that if they allowed the bank to proceed with foreclosure, FmHA would purchase the mortgage and "work with them." Pet. App. 24a. Petitioners claimed that, based on those assurances, they allowed the foreclosure to go forward rather than borrowing money from a relative to pay off the mortgage. The bank obtained a judgment of foreclosure in January 1983, which started the one-year statutory redemption period running. *Ibid.*

In mid-February 1984, petitioners again met with an FmHA official. The official told them they could either voluntarily convey the property to FmHA and extinguish their debt or suffer foreclosure and be liable for any deficiency. Petitioners decided to execute an offer of voluntary conveyance. In late February 1984, FmHA rejected the offer on the ground that the impending judicial sale of the property would prevent it from receiving marketable title. At a foreclosure sale held on March 1, 1984, FmHA purchased the property for approximately $50,000. Pet. App. 24a-25a.

3. In April 1986, petitioners commenced the present action in the United States District Court for the District of North Dakota, seeking to hold the Secretary of Agriculture and various FmHA officials in civil contempt for alleged violations of the injunction entered in *Coleman* v. *Block*. Pet. App. 1a-19a.

The district court held that the two FmHA officials with whom petitioners dealt directly were in contempt because they failed to give petitioners 30 days' notice of the loan deferral program before demanding voluntary conveyance of the property on which FmHA held a second mortgage. In the court's view, these two respondents had violated not only the injunction but also "elemental principles of contract law," and had "committed the tort of duress." See Pet. App. 26a. The court

further held that the Secretary was in contempt based upon a *respondeat superior* theory. *Id.* at 25a.[1]

The court awarded petitioners compensatory damages of more than $131,000, based on FmHA's "unjustified failure to forgive the balance of the debt upon the [petitioners'] offer to convey." The court awarded an additional $50,000 for petitioners' "extended emotional distress, inconvenience, and embarrassment." In addition, it awarded them attorney's fees. Pet. App. 26a.

4. The court of appeals reversed the award of damages. Pet. App. 20a-45a. Applying a "clearly erroneous" standard of review, it sustained the district court's finding that the two FmHA officials "were contumacious of the *Coleman* v. *Block* injunction." Pet. App. 27a-28a.[2] The court of appeals concluded, however, that this finding did not justify the award of damages. *Id.* at 29a-32a.

The court of appeals found it "apparent from the language of the District Court's opinion" that "the damages that it awarded did not flow from the [respondents'] violation of the notice provision of the *Coleman* injunction," Pet. App. 30a; instead, the award "flow[ed] from conduct that antedated the *Coleman* injunction or that otherwise [was] not encompassed by that injunction," *ibid.* The court of appeals observed that the district court based its award on the "unjustified failure to forgive the balance of the debt upon the [petitioners'] offer to convey." *Ibid.* (quoting *id.* at 17a). That statement, the court of appeals reasoned, "posits the existence of a duty to forgive the

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[1] The district court dismissed the remaining defendants from the action, a ruling which petitioners did not challenge in the court of appeals and do not challenge in this Court. See Pet. App. 25a n.4.

[2] The court of appeals did not address whether the district court correctly relied on a *respondeat-superior* theory in holding the Secretary in contempt, because the parties did not brief that issue. Pet. App. 27a n.6.

balance of the [petitioners'] debt—a duty that is nowhere to be found in the *Coleman* injunction and that could only arise from conduct or undertakings not covered by that injunction." *Id.* at 31a. In reviewing the record, the court of appeals was "struck by the [petitioners'] total failure to show a causal connection between the [respondents'] failure to give timely notice as required by the injunction and the damages alleged." *Ibid.* As an example, the court observed that petitioners "made no factual showing that if the required notice had been given in a timely manner they would have applied for the loan deferral program, nor have they made even an attempt to show that if they had applied for the program they would have qualified for it and received a loan deferral." *Ibid.* The court accordingly concluded that "the award of damages [was] clear error." *Ibid.*

In light of that conclusion, the court deemed it unnecessary to decide whether, as the government had contended, the award of damages was barred by sovereign immunity. Pet. App. 29a-30a. The court nonetheless expressed "grave doubts" that "by filing a contempt motion a claimant can * * * recover an unlimited amount of compensatory damages from the United States without being bound by the strictures of either the Tucker Act or the Federal Tort Claims Act, which are express (but carefully limited) waivers." *Ibid.*

The court also expressed the view that, even when a claimant has established a link between the violation of an injunction and the harm suffered, a civil contempt proceeding is not "an appropriate vehicle for awarding damages for emotional distress." Pet. App. 32a. The court remarked that in general, "the contempt power is not to be used as a comprehensive devi[c]e for redressing private injuries, and it does not encompass redress for injuries of this sort." *Ibid.*

Judge Lay dissented in part. He agreed that the award for emotional distress was improper. Pet. App. 32a-33a. He disagreed, however, with the majority's remarks on sovereign immunity, although he recognized that the majority "disclaimed its need to decide this issue." *Id.* at 38a. He also disagreed with the majority's reversal of the award for compensatory damages. Judge Lay believed that, if petitioners had received notice of the loan deferral program, they would have applied for and received a deferral, and thereby avoided foreclosure. *Id.* at 35a-36a.

ARGUMENT

1. The district court awarded petitioners more than $131,000 in damages in this contempt proceeding based on FmHA's "unjustified failure to forgive" petitioners' government debt. Pet. App. 17a. The court of appeals held that FmHA's failure to forgive the debt did not violate the underlying injunction and therefore did not justify the district court's award. *Id.* at 30a-31a. Petitioners do not challenge that holding in this Court, nor do they otherwise attempt to defend the district court's rationale for its award. Instead, they contend that the court of appeals should have upheld the award on a different rationale—namely, that the foreclosure on their property resulted from FmHA's failure to give them notice of its loan deferral program. Pet. 10-12. That fact-specific contention does not warrant further review.

The principles governing an award for compensatory damages in a civil contempt proceeding are well settled. One of the primary principles, as petitioners recognize, is that damages may be recovered only "to the extent they are established." Pet. 9 (internal quotation marks and citations omitted). In this case, the burden of proving damages fell on petitioners, as they were the parties

seeking a recovery. See, *e.g.*, *Ranco Indus. Prods. Corp.* v. *Dunlap*, 776 F.2d 1135, 1140 (3d Cir. 1985). As part of that burden, petitioners were required to show not only that they suffered actual damages, but also that the damages were caused by a violation of the injunction. See *United States* v. *United Mine Workers*, 330 U.S. 258, 302-304 (1947); *New York State Nat'l Org. for Women* v. *Terry*, 886 F.2d 1339, 1353-1354 (2d Cir. 1989), cert. denied, 495 U.S. 947 (1990); *NLRB* v. *Laborers' International Union*, 882 F.2d 949, 955-956 (5th Cir. 1989); cf. *Lujan* v. *Defenders of Wildlife*, No. 90-1424 (June 12, 1992), slip op. 3-6.

The court of appeals correctly determined that petitioners failed to meet their burden of proving that the damages they sustained were caused by FmHA's failure to give them notice of the loan deferral program. Pet. App. 30a-31a. As the court observed, petitioners "made no factual showing that if the required notice had been given in a timely manner, they would have applied for the loan deferral program, nor [did] they ma[k]e even an attempt to show that if they had applied for the program they would have qualified for it and received a loan deferral." *Id.* at 31a. Although Judge Lay disputed that assessment, he did not cite any record evidence to show that petitioners offered the required proof. See *id.* at 35a-36a.

At bottom, petitioners simply disagree with the court of appeals' application of well settled principles of civil contempt to the facts of this case. That disagreement provides no basis for further review.

2. Nor is further review warranted of petitioners' contention that the court of appeals erred in reversing the portion of the district court's award compensating them for emotional distress. Pet. 7-9. For one thing, the court of appeals' discussion of this issue was dictum. The court merely expressed the "belie[f]" that damages

for emotional distress would have been inappropriate here, "[e]ven assuming *arguendo* a causal relationship [existed]" between the damages that petitioners sought to recover and a violation of the injunction. Pet. App. 32a. Furthermore, the court did not adopt a hard-and-fast rule against awards for emotional distress. On the contrary, the court recognized that "in some circumstances an award of damages to a party injured by the violation of an injunction may be appropriate." *Ibid.* The court simply did not believe that contempt proceedings should "be used as a comprehensive devi[c]e for redressing private injuries." *Ibid.* Finally, petitioners do not cite any decision that conflicts with the court of appeals' view that compensation for emotional distress generally should not be available in civil contempt proceedings.[3] Under these circumstances, no further review of the issue is warranted.

3. Finally, petitioners contend that sovereign immunity did not bar the district court's award of compensatory damages. Pet. 13-15. The court of appeals found it unnecessary to address whether sovereign immunity barred the recovery of damages, having concluded that petitioners' damages did not flow from a violation of the injunction. Pet. App. 30a. Because that conclusion was correct, this case does not provide an appropriate occasion for this Court to review the issue whether sovereign immunity bars an award of compensatory

[3] Instead, petitioners rely (Pet. 7-8) on decisions such as *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 193 (1948), which recognize that courts have authority in civil contempt proceedings to grant remedial relief to a party who has been injured by the violation of an injunction. Petitioners' reliance on such decisions is misplaced. Here, the court of appeals expressed doubt about the wisdom of using civil contempt proceedings to compensate for emotional distress, but it did not suggest that courts lack authority to do so.

relief against government officials in a civil contempt proceeding.

Further review of that issue would not be warranted even if the court of appeals erred in setting aside the award on other grounds. The district court awarded relief not only against two FmHA officials but also against the Secretary of Agriculture in his official capacity. Pet. App. 18a. The court based the award against the Secretary solely upon a theory of *respondeat superior*. *Id.* at 12a. The court of appeals expressed doubt that the Secretary could be held in contempt under that theory, but did not decide the issue because it had not been briefed by the parties. *Id.* at 27a n.6. That issue, however, would have to be decided before deciding whether sovereign immunity barred the award against the Secretary. Because the *respondeat-superior* issue was not pressed by the parties or passed upon in the courts below, this case does not provide an appropriate vehicle for further review of the sovereign-immunity issue. Cf. *United States* v. *Williams*, 112 S. Ct. 1735, 1738-1741 (1992).

In any event, the court of appeals properly entertained "grave doubts that the contempt power can be carried as far as it has been carried against the United States in the present litigation." Pet. App. 30a. As the court of appeals observed, there is no "express waiver of sovereign immunity applicable to this case." *Ibid.*[4] In the absence of such a waiver, sovereign immunity precludes

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[4] In his dissent from the panel opinion, Judge Lay suggested that the Administrative Procedure Act (APA), 5 U.S.C. 702, waived sovereign immunity from the district court's award. Pet. App. 38a-43a. The APA, however, authorizes only actions "seeking relief other than money damages." 5 U.S.C. 702. Petitioners admit that the district court's award was "designed to compensate [them]" for monetary "damages." Pet. 12. Thus, the APA is inapplicable here.

an award of contempt sanctions against the United States, as this Court recently recognized. See *United States Dep't of Energy* v. *Ohio*, 112 S. Ct. 1627, 1634-1635, 1636-1637, 1640 (1992) (construing certain environmental laws to waive sovereign immunity from civil contempt sanctions). Although the award in this case was entered against government officials and not against the government itself, petitioners admit that in substance they sought to "bar[] the government from collecting the debt" that petitioners owed to the United States. Pet. 14. Thus, petitioners sought relief that would "expend itself on the public treasury." *Dugan* v. *Rank*, 372 U.S. 609, 620-621 (1963); see also *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 687-688 (1949). For that reason, the present action was barred by sovereign immunity.[5]

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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JULY 1992

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[5] For the same reason, petitioners err in relying (Pet. 13-14) on *Nelson* v. *Steiner*, 279 F.2d 944 (7th Cir. 1960). In *Nelson*, the district court held individual government employees personally liable for damages in a civil contempt proceeding. *Id.* at 947-948. Here, in contrast, petitioners sought relief against the public fisc.